

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Baker,

Complainant,

vs.

**FINDINGS OF FACT,  
CONCLUSIONS AND  
ORDER**

Ken Tschumper, Ken Tschumper for  
Minnesota House, Dennis DeKeyrel, and  
Precision Plus, Inc.,

Respondents.

The above-entitled matter came on for an evidentiary hearing on October 23, 2012, before a panel of three Administrative Law Judges: Richard C. Luis (presiding judge), Jeanne M. Cochran, and Kirsten M. Tate. The OAH record closed with the uploading of the digital recording of the evidentiary hearing on October 24, 2012.

R. Reid LeBeau II, Attorney at Law, Jacobson Buffalo, appeared on behalf of the Complainant, Doug Baker.

Karl Sonnerman, Attorney at Law, appeared on behalf of Ken Tschumper, Ken Tschumper for Minnesota House committee, Dennis DeKeyrel, and Precision Plus, Inc. (Respondents).

**STATEMENT OF THE ISSUES**

1. Did Respondents Dennis DeKeyrel and Precision Plus, Inc. violate Minn. Stat. § 211B.15, subd. 2 by contributing money to pay for advertising time promoting Mr. Tschumper's campaign for the Minnesota House of Representatives seat in District 28B?
2. Did Respondent Dennis DeKeyrel violate Minn. Stat. § 211B.15, subd. 13, by aiding and abetting a violation of Minn. Stat. § 211B.15, subd. 2?
3. Did Respondent Ken Tschumper for Minnesota House committee violate Minn. Stat. § 211B.13, subd. 2, by knowingly receiving or accepting a prohibited corporate contribution?

4. Did Respondents Ken Tschumper and Dennis DeKeyrel violate Minn. Stat. § 211B.04 by preparing and disseminating campaign material without the required disclaimer?

The Panel concludes that the Complainant has established by a preponderance of the evidence that Respondent Precision Plus, Inc. violated Minn. Stat. § 211B.15, subd. 2; that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 13; that Respondent Ken Tschumper for Minnesota House committee violated Minn. Stat. § 211B.13, subd. 2; and that Respondents Ken Tschumper and Dennis DeKeyrel violated Minn. Stat. § 211B.04. The Panel further concludes that the Complainant failed to establish that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 2.

Based on the record and proceedings herein, the undersigned panel of Administrative Law Judges makes the following:

### **FINDINGS OF FACT**

1. The Complainant, Doug Baker, is the Fillmore County Republican Party chairman.

2. Respondent Ken Tschumper is the Minnesota Democratic Farmer Labor (DFL) Party's endorsed candidate for the Minnesota House of Representatives seat in District 28B.<sup>1</sup> Mr. Tschumper represented this district in the Minnesota House of Representatives for two years (2006-2008). He was defeated by Greg Davids in 2008. Mr. Davids is the incumbent and Mr. Tschumper's opponent in the November 2012 election.<sup>2</sup>

3. Respondent Ken Tschumper for Minnesota House is the name of Mr. Tschumper's campaign committee.<sup>3</sup>

4. Respondent Dennis DeKeyrel is the manager of Mr. Tschumper's campaign committee and the Fillmore County DFL Party chairman.<sup>4</sup>

5. Mr. DeKeyrel is also the owner and president of Precision Plus, Inc., a Minnesota subchapter S corporation. Mr. DeKeyrel is the sole owner of Precision Plus and its only employee.<sup>5</sup>

6. On August 1, 2012, Mr. DeKeyrel, as Mr. Tschumper's campaign manager, went to the KFIL radio station studio in Preston to record a radio advertisement promoting Mr. Tschumper's candidacy and to purchase a block of advertising time to

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<sup>1</sup> House District 28B includes all of Fillmore and Houston Counties.

<sup>2</sup> Testimony of Ken Tschumper.

<sup>3</sup> The Ken Tschumper for Minnesota House committee has four members: Ken Tschumper, his wife Robin, campaign manager Dennis DeKeyrel, and campaign treasurer Sarah Goff.

<sup>4</sup> Testimony of Dennis DeKeyrel.

<sup>5</sup> DeKeyrel Test.

broadcast the advertisement. The radio station in Preston is located approximately 9 miles from Mr. DeKeyrel's home in Harmony. The radio station charged the Tschumper campaign \$224 for running the radio advertisement for four weeks. Mr. DeKeyrel assumed the radio station would bill the Tschumper campaign committee for the advertisements. Instead, the radio station manager, Bruce Fishbaugher, told Mr. DeKeyrel that payment for the radio advertisements was due with the placement of the advertisements. Mr. DeKeyrel had not brought his personal checkbook with him to the station and only had in his wallet a single check from the corporate account of Precision Plus. Mr. DeKeyrel paid for the advertising time with the Precision Plus check.<sup>6</sup>

7. On the radio station's "Agreement Form for Political Candidate Advertisement,"<sup>7</sup> Mr. DeKeyrel represented that the broadcast time was being paid for by the "Ken Tschumper for the Minnesota House" campaign committee. Near this statement on the form, Mr. Fishbaugher made the following notation: "Precision Plus personal check from DeKeyrel."<sup>8</sup>

8. On August 1, 2012, Mr. DeKeyrel sent an email to Mr. Tschumper informing him that he had written a check in the amount of \$224 for the radio ads.<sup>9</sup>

9. Having run for election on two other occasions, Mr. Tschumper was aware that the radio station would require payment on the day the radio advertising time was purchased. However, he forgot to tell Mr. DeKeyrel that payment would be due that day. It did not occur to Mr. Tschumper that Mr. DeKeyrel might pay for the advertisements with a corporate check.<sup>10</sup>

10. On August 2, 2012, Mr. Tschumper sent an email to the Treasurer of his campaign committee, Sarah Goff, and told her to send Mr. DeKeyrel a check for \$224 for the KFIL radio advertisements "ASAP."<sup>11</sup>

11. On August 5, 2012, Ms. Goff wrote a check to Mr. DeKeyrel for \$224 from the Ken Tschumper for Minnesota House campaign committee.<sup>12</sup> Mr. DeKeyrel deposited the check into his personal checking account on or about August 9, 2012.<sup>13</sup>

12. Mr. DeKeyrel reimbursed the \$224 to Precision Plus, Inc. sometime after September 20, 2012.<sup>14</sup>

13. The KFIL radio station broadcast the campaign advertisements promoting Mr. Tschumper's candidacy between August 3, 2012, and August 23, 2012.<sup>15</sup> Each

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<sup>6</sup> DeKeyrel Test.; Ex. A-4.

<sup>7</sup> Ex. A-2 and A-3.

<sup>8</sup> Ex. A-3.

<sup>9</sup> Ex. D.

<sup>10</sup> Tschumper Test.; Ex. D (Aug. 2, 2012, email from Tschumper to DeKeyrel and Goff.)

<sup>11</sup> Ex. D.

<sup>12</sup> Ex. C.

<sup>13</sup> DeKeyrel Test.

<sup>14</sup> DeKeyrel Test.

<sup>15</sup> Ex. A-1.

advertisement closed with a statement that had been pre-recorded by Mr. Tschumper that the advertisement was paid for by the Ken Tschumper for Minnesota House campaign committee.<sup>16</sup>

Based upon the foregoing Findings of Fact, the undersigned Panel of Administrative Law Judges makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge Panel is authorized to consider this matter pursuant to Minn. Stat. § 211B.35.

2. The Respondents' radio advertisements are campaign material within the meaning of Minn. Stat. § 211B.01, subd. 2.

3. Minn. Stat. § 211B.04, as amended in 2010, provides in relevant part, as follows:

(a) A person who participates in the preparation or dissemination of campaign material other than as provided in section 211B.05, subdivision 1, that does not prominently include the name and address of the person or committee causing the material to be prepared or disseminated in a disclaimer substantially in the form provided in paragraph (b) or (c) is guilty of a misdemeanor.

(b) Except in cases covered by paragraph (c), the required form of disclaimer is: "Prepared and paid for by the ..... committee, .....(address)" for material prepared and paid for by a principal campaign committee, or "Prepared and paid for by the ..... committee, .....(address), in support of .....(insert name of candidate or ballot question)" for material prepared and paid for by a person or committee other than a principal campaign committee.

(c) In the case of broadcast media, the required form of disclaimer is: "Paid for by the ..... committee."

(d) Campaign material that is not circulated on behalf of a particular candidate or ballot question must also include in the disclaimer either that it is "in opposition to .....(insert name of candidate or ballot question.....)"; or that "this publication is not circulated on behalf of any candidate or ballot question."

(e) This section does not apply to objects stating only the candidate's name and the office sought, fund-raising tickets, or personal letters that are clearly being sent by the candidate.

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<sup>16</sup> Tschumper Test.

(f) This section does not apply to an individual or association who acts independently of any candidate, candidate's committee, political committee, or political fund and spends only from the individual's or association's own resources a sum that is less than \$2,000 in the aggregate to produce or distribute campaign material that is distributed at least seven days before the election to which the campaign material relates.<sup>17</sup>

4. Minn. Stat. § 211B.15, subd. 2, prohibits a corporation from contributing directly or indirectly anything of monetary value to a committee to promote or defeat the election of a candidate.
5. Minn. Stat. § 211B.15, subd. 13, prohibits the aiding and abetting of a violation of Section 211B.15.
6. Minn. Stat. § 211B.13, subd. 2, prohibits a person from knowingly soliciting, accepting or receiving money or anything of monetary value that is a prohibited corporate disbursement under section § 211B.15.

7. The burden of proving the allegations in the Complaint is on the Complainant. The standard of proof is a preponderance of the evidence.<sup>18</sup>

8. The Complainant has established by a preponderance of the evidence that Respondent Precision Plus, Inc. violated Minn. Stat. § 211B.15, subd. 2, by contributing to the Tschumper campaign committee \$224 to pay for radio advertisements.

9. The Complainant has established by a preponderance of the evidence that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 13, by aiding and abetting the violation of Minn. Stat. § 211B.15, subd. 2.

10. The Complainant has established by a preponderance of the evidence that Respondent Tschumper for Minnesota House committee violated Minn. Stat. § 211B.13, subd. 2, by knowingly receiving a prohibited corporate contribution.

11. The Complainant has established by a preponderance of the evidence that Respondents Ken Tschumper and Dennis DeKeyrel violated Minn. Stat. § 211B.04 by not including an accurate disclaimer on radio advertisements with respect to the payment for the advertisements.

12. The Complainant failed to establish by a preponderance of the evidence that Respondent Dennis DeKeyrel violated Minn. Stat. § 211B.15, subd. 2, and that allegation is dismissed.

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<sup>17</sup> Minn. Stat. § 211B.04; Minn. Laws 2010 ch. 397, § 15. The amendment is applicable to campaign material "prepared and disseminated" on or after June 1, 2010.

<sup>18</sup> Minn. Stat. § 211B.32, subd. 4.

13. The attached Memorandum explains the reasons for these Conclusions and is incorporated by reference.

Based on the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

### ORDER

#### IT IS ORDERED:

1. That Respondent Precision Plus, Inc. pay a civil penalty of \$200 for violating Minn. Stat. § 211B.15, subd. 2.<sup>19</sup>
2. That the Complaint's allegation that Mr. DeKeyrel violated Minn. Stat. § 211B.15, subd. 2, is **DISMISSED**.
3. That Respondent Dennis DeKeyrel not be assessed a civil penalty for violating Minn. Stat. § 211B.15, subd. 13, by aiding and abetting Precision Plus, Inc.'s violation of Minn. Stat. § 211B.15, subd. 2.
4. That the Ken Tschumper for House committee pay a civil penalty of \$100 for violating Minn. Stat. § 211B.13, subd. 2.<sup>20</sup>
5. That Respondents Ken Tschumper and Dennis DeKeyrel not be assessed a civil penalty for violating Minn. Stat. § 211B.04.

Dated: October 29, 2012

s/Richard C. Luis  
RICHARD C. LUIS  
Presiding Administrative Law Judge

s/Jeanne Cochran  
JEANNE COCHRAN  
Administrative Law Judge

Kirsten M. Tate  
KIRSTEN M. TATE  
Administrative Law Judge

<sup>19</sup> The check should be made payable to: "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, P.O. Box 64620, St. Paul, MN 55164-0620.

<sup>20</sup> *Id.*

## **NOTICE**

Pursuant to Minn. Stat. § 211B.36, subd. 5, this is the final decision in this case. Under Minn. Stat. § 211B.36, subd. 5, a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

## **MEMORANDUM**

Minn. Stat. § 211B.15 prohibits corporations from contributing money or anything of monetary value to candidates or their committees. The Complainant established that Respondent Dennis DeKeyrel, as owner and president of Precision Plus, Inc., wrote a check in the amount of \$224 from the corporate checking account of Precision Plus, Inc. to pay for the Tschumper campaign's radio advertisements. By doing this, Respondent Precision Plus, Inc., effectively made a monetary contribution to Ken Tschumper's candidacy in violation of Minn. Stat. § 211B.15, subd. 2. Because the statute is directed at corporations and not individuals, however, that Complainant's allegation that Mr. DeKeyrel violated Minn. Stat. § 211B.15, subd. 2, is dismissed. The Panel finds that a civil penalty of \$200 against Respondent Precision Plus is appropriate. The Panel is persuaded that the act was inadvertent, had minimal or no impact on voters, and that the Tschumper Campaign Committee attempted to promptly correct the error by writing a reimbursement check to Mr. DeKeyrel four days later.

The Panel has further decided to impose no separate penalty on Respondent Dennis DeKeyrel for violating Minn. Stat. § 211B.15, subd. 13, by aiding and abetting the violation of the corporate contribution prohibition at Minn. Stat. § 211B.15, subd. 2. Precision Plus, Inc. is a subchapter S corporation with Mr. DeKeyrel as its president and sole employee. As a subchapter S corporation, any penalty assessed against Precision Plus will be paid by Mr. DeKeyrel. The Panel concludes that assessing a penalty against Mr. DeKeyrel and his corporation for violations of Section 211B.15 would penalize Mr. DeKeyrel twice for the same conduct.

The Complainant also established that by knowingly accepting the prohibited contribution of \$224 from Precision Plus, Inc., Respondent Ken Tschumper for House committee violated Minn. Stat. § 211B.13, subd. 2. Mr. DeKeyrel, as the manager of the Tschumper committee, knowingly received the prohibited corporate contribution from Precision Plus, Inc. when he wrote the check to cover the cost of the radio advertising time. As with the violation by Precision Plus, the Panel finds that the committee's violation of § 211B.13, subd. 2 was inadvertent, had minimal if any impact on voters, and that the committee attempted to promptly correct the error by writing a reimbursement check to Mr. DeKeyrel four days later. The Panel concludes that assessing a civil penalty of \$100 against the Ken Tschumper for House Committee is appropriate.

Finally, the Panel concludes that the Complainant established a technical violation of Minn. Stat. § 211B.04 on the part of Mr. Tschumper and Mr. DeKeyrel. Both Mr. Tschumper and Mr. DeKeyrel testified that they prepared and caused to be disseminated the radio advertisements at issue in this matter. For radio advertisements and other broadcast media, Minn. Stat. § 211B.04 requires that the persons or committee “causing the material to be prepared or disseminated” prominently include “the name and address of the person or committee” in a disclaimer substantially in the form provided by paragraph (c). Paragraph (c) requires the disclaimer to state: “Paid for by the \_\_\_\_\_ committee.”

The radio advertisements at issue were prepared by Mr. Tschumper and Mr. DeKeyrel. So prominently identifying the Tschumper committee as the organization that prepared and disseminated the advertisement is accurate. However, the statute requires the disclaimer to state who *paid* for the advertisement and, at least until Precision Plus was reimbursed, the ads were not paid for by the Tschumper committee as the disclaimer stated. The advertisements were broadcast on the radio a couple times a day between August 3, 2012 and August 23, 2012. The Panel finds that once the Committee reimbursed Mr. DeKeyrel the \$224, it had effectively paid for the advertisements even though Mr. DeKeyrel did not immediately reimburse Precision Plus, Inc. Therefore, the disclaimer requirement was inaccurate for approximately 3 days. The Panel concludes that no civil penalty is warranted for this technical violation of Minn. Stat. § 211B.04.

**R.C.L., J.M.C. and K.M.T.**